

VERNON L. NASH

IBLA 74-259

Decided October 21, 1974

Appeal from decision of Fairbanks District Office, Bureau of Land Management, rejecting appellant's application to purchase and canceling headquarters site claim F-035297.

Affirmed.

1. Words and Phrases

"Headquarters." The term "headquarters" as used in the Act of May 14, 1898, as amended, 43 U.S.C. § 687a (1970), means the usual place of business, principal office or administrative center used in connection with a trade, manufacture or other productive industry.

2. Alaska: Headquarters Sites

A headquarters site application which states that hunting and fishing is the commercial operation done in connection with the site is properly rejected when the applicant submits no evidence that he himself was engaged in commercial hunting or fishing or that he ever received income from guests who used the site in connection with such recreational purposes.

3. Alaska: Headquarters Sites

A headquarters site application is properly rejected when the applicant has failed to sustain his burden of showing that the site has been used as a headquarters, i.e., as the usual place of business, principal office or administrative center of his plumbing and

heating business. The term "headquarters" will not be construed so broadly as to include within its meaning use of a site for recreational purposes with occasional business discussions occurring among friends. Even if such use were to be considered primarily a business use, it is clearly not a "headquarters" use.

4. Federal Employees and Officers: Authority to Bind Government

An applicant can gain no right to public lands by reliance on erroneous or otherwise unauthorized statements of a Bureau of Land Management employee.

APPEARANCES: Eugene V. Miller, Esq., Fairbanks, Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Vernon L. Nash has appealed from a decision of the Fairbanks District Office, Bureau of Land Management, dated March 6, 1974, rejecting his purchase application F-035297 for land to be used as a headquarters site.

The relevant facts were succinctly stated in the District Office decision as follows:

On May 13, 1971, Mr. Vernon L. Nash filed an application to purchase [a] headquarters site. The land involved is described as follows:

Corner #1 is a point where an unnamed slough meets the Salcha River within what will be when surveyed section 33 of T. 4 S., R. 7 E., F.M.; thence go 500 feet in a northeasterly direction along this slough to Corner #2; thence go 600 feet to Corner #3; thence go south 330 feet to the north bank of the Salcha River to Corner #4; thence go east 330 feet along the north bank of the Salcha to Corner #1, P.O.B. (unapproved U.S.S. 5059).

Containing 5 acres, more or less.

Mr. Nash filed a Notice of Location of Settlement of Occupancy on June 13, 1966 and in the Notice of Location, he stated that the list of improvements was a

load of lumber and cleared site. On September 8, 1966, Mr. Nash was notified that the claim was recorded.

On December 16, 1970, Mr. Nash was sent a notice that an application to purchase was required by June 13, 1971. An application to purchase was received from Mr. Nash on May 13, 1971.

On September 8, 1971, Mr. Nash was sent a notice to submit proof and showing that the claim was being used for a hunting and fishing business, as specified in his application dated June 13, 1966. A financial statement for Nash Plumbing and Heating was submitted along with several letters indicating the correspondent knew of Mr. Nash's cabin or had been lodged at Mr. Nash's cabin as week-end guests. Mr. Nash submitted no evidence that his headquarters site was actually used and occupied for a fishing and hunting business, as indicated in his application to purchase.

* * * * *

Based on the above findings, the District Office concluded that appellant had failed to show that he used the site in connection with a productive industry as required by law.

43 U.S.C. § 687a (1970), states that a citizen of the United States who is engaged in a trade, manufacture, or other productive industry may purchase one claim, not exceeding five acres, of unreserved public lands as a headquarters site under the rules and regulations prescribed by the Secretary of the Interior. 43 CFR 2563.1-1 states, among other requirements, that the applicant must show the actual use of the land for which he is applying and the nature of his trade, business, or productive industry. The burden is on the appellant, as the applicant for patent to land, to present evidence which shows compliance with the statute and regulations. Lee S. Gardner, A-30586 (September 26, 1966).

On appeal, Nash maintains that he uses the site for the purpose of entertaining prospective patrons and that the property is, therefore, a headquarters essential to his plumbing and heating business. He also maintains that these facts were presented to an employee of the Bureau of Land Management in 1970 who advised appellant that the information presented was sufficient and that a patent to the site would be forthcoming. Should the above allegations be insufficient to sustain his claim, appellant requests an opportunity for a hearing to present oral evidence consisting of testimony by persons who have utilized the property as patrons of appellant's business known as Nash Plumbing and Heating.

Attached to the Notice of Appeal are several letters signed by friends and business associates of appellant. The letters are similar in nature to those originally submitted by appellant as proof that the claim was being used in accordance with the requirements of the statute and regulations. They generally state that the correspondents knew of Nash's cabin or had been entertained at the cabin as weekend guests. As distinguished from most of the earlier letters, however, in these instances the correspondents point out that during their visits to the cabin business discussions transpired.

[1] Neither the statute nor the regulations define the term "headquarters." The term has usually been defined to mean the usual place of business, principal office or administrative center of an enterprise. Huerter v. Hassig, 175 Kan. 781, 267 P.2d 532, 535 (1954); Jossey Georgia & A. Ry., 102 Ga. 706, 28 S.E. 273, 274 (1897); see also Webster's New International Dictionary (2d ed., unabridged 1949). This definition is consistent with the legislative history of the Act. The original Trade and Manufacturing Site Act of May 14, 1898, was amended by the Act of March 3, 1927, c. 323, 44 Stat. 1364, in order to allow persons engaged in a trade, manufacture or other productive industry to purchase a homestead or headquarters site. The reason for the amendment was explained in a letter dated December 1, 1925, from the First Assistant Secretary of the Interior to the Board of Appeals of the Department, which reads in pertinent part as follows:

The Department of Agriculture advises me that there are many individuals * * * who are located on public or national forest lands in Alaska, and who are either employed in canneries, sawmills and other corporate enterprises, or who are themselves engaged in the fishing, mining, or other industries as individuals. These people would like to be able to acquire patents to small tracts of land for their homes and headquarters * * *.

See also Solicitor's Opinion, M-36187 (November 12, 1953). The term "headquarters" appears to be given its usual meaning, in this instance the principal site used in connection with a trade, manufacture or other productive industry. However, there is no requirement that the trade or other occupation be carried on at the headquarters site. Id.

[2] The showing submitted by appellant did not demonstrate that he used the site as a headquarters for a trade, manufacture or productive industry. Appellant's location notice and site application state that the nature of the headquarters operation at the site was in connection with "Fishing and Hunting." The letters originally submitted as proof of headquarters use, and the letters subsequently appended to the Notice of Appeal, are set out

in terms of "entertained," "friends," "recreation spot," "recreation site * * * guests," "perfect river boating buddy and friends," "[w]e and other friends have been frequent guests," etc. One of the letters submitted as proof of commercial use states that, "Mr. Nash uses this cabin on the Salcha River practically every week end [sic] in the summer to take people for fishing and hunting trips." To qualify to buy a headquarters site the claimant must use the site in connection with a productive industry. Lynn E. Erickson, 10 IBLA 11, 17, 80 I.D. 215, 218 (1973). It is apparent from the record that Nash was not himself engaged in fishing or hunting on a commercial basis and did not charge his friends any money for using the cabin for recreational purposes. Given the absence of any income from this activity, appellant has not satisfied the requirement of showing use of the site in connection with a productive fishing and hunting business. John V. Vogt, 17 IBLA 87 (1974); Lynn E. Erickson, supra.

[3] Nor has appellant sustained his burden of showing a history of business activity at the site which would justify characterizing it as a headquarters used as the usual place of business, principal office or administrative center of his plumbing and heating business. Appellant has submitted a 1969-70 financial statement which lists his business assets, i.e., all property and equipment. The list does not include the site or cabin in question. Furthermore, the contacts with the site alleged by appellant's friends and business acquaintances are primarily recreational in nature, not commercial. The term "headquarters" will not be construed so broadly as to include within its meaning use of a site for recreational purposes with occasional business discussions occurring among friends. Even if such use were deemed to be primarily a business use, it is clearly not a "headquarters" use. Accordingly, the decision below to reject appellant's application and cancel the claim was correct.

[4] Our conclusion remains the same even assuming an employee of the Bureau of Land Management advised appellant that, based on the facts set out above, the requirements of the headquarters site law had been satisfied. An applicant can gain no right to public lands by reliance on the erroneous or otherwise unauthorized statements made by a Bureau employee. Ralph W. Griffen, 10 IBLA 289 (1973); Mark Systems, Inc., 5 IBLA 257 (1972); Southwest Salt Co., 2 IBLA 81, 78 I.D. 82 (1971).

Appellant's request for a hearing to present testimony by persons who have utilized the site as patrons of appellant's plumbing and heating business is denied. There is no allegation that their testimony will in any way vary from the written statements already submitted which adequately describe the manner in which such persons used the site in question. Since appellant has not made a prima facie showing of compliance with the law, no hearing is required. Frederick P. Dunder, 17 IBLA 101 (1974).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

